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Human resources management

Provisional Staff Rules

Report of the Secretary-General

Summary

Pursuant to staff regulation 12.3, the present report provides information concerning the new Staff Rules that the Secretary-General provisionally promulgated on 1 July 2009 (ST/SGB/2009/7) in order to implement the new contractual arrangements approved by the General Assembly in its resolution 63/250.

Consistent with staff regulation 12.4, the provisional Staff Rules reported by the Secretary-General will enter into full force and effect on 1 January 2010 taking into account any modifications and/or deletions as may be directed by the General Assembly during the main part of its sixty-fourth session.

The report also provides information relative to the legal framework and legislative basis for the Staff Rules and the drafting and approval process of the new rules, including staff management consultations.

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I. Introduction

1. Staff regulation 12.2 provides that the Secretary-General may prepare provisional staff rules to implement the Staff Regulations. Staff regulation 12.3 provides that the full text of provisional Staff Rules and amendments should be reported annually to the General Assembly.

2. Consistent with staff regulation 12.4, unless otherwise indicated by the General Assembly during the main part of its sixty-fourth session, the provisional Staff Rules contained in document ST/SGB/2009/7 will be effective from 1 January 2010.

II. Background

3. Pursuant to section II, paragraph 12, of General Assembly resolution 63/250, the Secretary-General prepared proposed amendments to the Staff Regulations (A/63/694) that would allow implementation of the new contractual framework and the new system for the administration of justice on 1 July 2009. Following review by the Assembly during the first part of its resumed sixty-third session and its decision on the proposed amendments to the Staff Regulations, as contained in resolution 63/271, the Secretary-General promulgated the amended Staff Regulations (ST/SGB/2009/6) effective 1 July 2009.

4. As indicated in paragraph 2 of the Secretary-General's report on amendments to the Staff Regulations (A/63/694) and further requested by the General Assembly in paragraph 15 of its resolution 63/271, the Secretary-General prepared and provisionally promulgated the new Staff Rules effective 1 July 2009. The Secretary-General now submits the full text of those provisional Staff Rules to the Assembly for its consideration during the main part of its sixty-fourth session.

5. Taking into account the recommendation of the Advisory Committee on Administrative and Budgetary Questions contained in paragraph 3 of its report on the report of the Secretary-General on the amendments to the Staff Regulations (see A/63/754), the present report provides more detailed information on the context and legislative basis of the amendments to the Staff Rules and the drafting and approval process of the provisional Rules.

III. Legal framework and legislative basis

6. The legal framework or hierarchy of norms of the United Nations is composed of the Charter of the United Nations, the Staff Regulations, the Staff Rules and administrative issuances.

7. The Charter of the United Nations is the fundamental source of law for the Organization. Article 101, paragraph 1, of the Charter provides that "The staff shall be appointed by the Secretary-General under regulations established by the General Assembly." The authority vested in the Assembly to make regulations for the Secretariat staff is restated in rule 50 of the rules of procedures of the Assembly as follows: "The General Assembly shall establish regulations concerning the staff of the Secretariat." Pursuant to these provisions, the Assembly has adopted resolutions

establishing and amending such regulations, which are promulgated in the Staff Regulations.

Staff Regulations

8. The preamble to the Staff Regulations defines their scope and purpose as follows: "The Staff Regulations embody the fundamental conditions of service and the basic rights, duties and obligations of the United Nations Secretariat. They represent the broad principles of human resources policy for the staffing and administration of the Secretariat." The broad principles set forth in the Regulations are intended not only for the guidance of the Secretary-General, but also for the guidance of staff members in matters pertaining to their status, service and conduct.

Staff Rules

9. The Secretary-General's authority and responsibility, set out in the scope and purpose of the Staff Regulations, is as follows: "The Secretary-General, as the chief administrative officer, shall provide and enforce such staff rules consistent with these principles as he or she considers necessary."

10. The Secretary-General is required to report on new Staff Rules or amendments to the Staff Rules to the General Assembly. As indicated above, under staff regulations 12.1, 12.3 and 12.4, the Staff Rules and amendments made thereto by the Secretary-General are provisional until they have been reported to the Assembly, which may direct that they be withdrawn or modified. Since the Staff Regulations are higher in the hierarchy of norms than the Staff Rules, the Secretary-General, who has the authority to establish Staff Rules pursuant to staff regulation 12.2, must ensure that the Rules are in conformity with the Regulations. In case of conflict, the Regulations prevail, and those provisions of the Rules that may be in violation of the Regulations will be disregarded.

Administrative issuances

11. In addition to the Staff Rules, the Administration of the Secretary-General establishes internal policies and procedures that are circulated to staff through Secretary-General's bulletins and administrative instructions. These issuances constitute legally binding interpretations of the Staff Regulations and Rules and of their implementation.

12. The following matters require the issuance of Secretary-General's bulletins:

(a) Promulgation of rules for the implementation of regulations, resolutions and decisions adopted by the General Assembly, including Financial Regulations and Rules and publication of consolidated texts thereof; Staff Regulations and Rules and publication of consolidated texts thereof; Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation, and publication of consolidated texts thereof; and regulations and rules, as required, for the implementation of resolutions and decisions adopted by the Security Council;

(b) Organization of the Secretariat;

(c) Establishment of specially funded programmes.

13. Administrative instructions prescribe instructions and procedures for the implementation of the Financial Regulations and Rules, the Staff Regulations and Rules and Secretary-General's bulletins. The Secretary-General is not required to report the promulgation of administrative instructions to the General Assembly. All administrative instructions, as well as Secretary-General's bulletins and information circulars, are available on i-Seek in the Human Resources Handbook and on the United Nations website via the Official Document System.

14. In addition to administrative issuances, the Administration issues information circulars, which contain general information on or explanation of established rules, policies and procedures, as well as isolated announcements of one-time or temporary interest. Information circulars may not be used for promulgating new rules, policies or procedures.

IV. Drafting and approval process

15. The internal procedure for preparing amendments to or new Staff Regulations, and Rules and administrative issuances is the following:

(a) The Office of Human Resources Management prepares a draft document that is sent to the Office of Legal Affairs for review and legal advice, and subsequently submits a revised draft for consultation to executive officers at Headquarters, chiefs of administration and human resources at offices away from Headquarters, heads of human resources in the United Nations funds and programmes and Staff Union representatives;

(b) When the comments received during the consultation process involve changes of a substantive nature, the draft document is sent again to the Office of Legal Affairs for final review;

(c) The draft document is then finalized and submitted to the Secretary-General, or to the Under-Secretary-General for Management or the Assistant Secretary-General for Human Resources Management as appropriate, for final approval.

16. For the preparation of the new provisional Staff Rules, the Office of Human Resources Management followed the practice described above within the limited time frame available. Following the approval of General Assembly resolution 63/250 on 24 December 2008, the Office established a working group composed of representatives from departments within the Secretariat and from the United Nations funds and programmes (the United Nations Children's Fund (UNICEF), the United Nations Development Programme (UNDP), the United Nations Population Fund (UNFPA), the Office of the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Office for Project Services (UNOPS)), to recommend a text of the new Staff Rules. The Office subsequently conducted extensive consultations with executive officers at Headquarters, chiefs of administration and human resources at offices away from Headquarters, heads of human resources in the funds and programmes and Staff Union representatives for

review and comments. Comments received were duly reviewed and the draft Rules were further revised as appropriate.

17. As part of this consultation process, the Office of Human Resources Management held a number of videoconferences, including with staff representatives, and also held a retreat with representatives from departments within the Secretariat and from the funds and programmes, during which the full text of the draft new Staff Rules was reviewed. Throughout the entire period of drafting and consultation, the Office consulted extensively with the Office of Legal Affairs. The extensive process served to ensure that the Staff Rules were in strict compliance with the General Assembly resolutions (63/250 and 63/253) and with the Staff Regulations.

18. The new Staff Rules, which were provisionally promulgated by the Secretary-General on 1 July 2009, contain details of the implementation of the new contractual framework encompassing three types of appointment and the provisions for the new system of administration of justice in the United Nations, in conformity with the approved amended Staff Regulations. The relevant administrative issuances are being developed and promulgated in a phased approach and provide detailed instructions and procedures related to the implementation of the new contractual framework and the system of administration of justice.

V. Structure and content of the provisional Staff Rules

19. In accordance with staff regulation 12.2 and as further requested by the General Assembly in paragraph 14 of its resolution 63/271, the Secretary-General has ensured that the provisional Staff Rules comply with the provisions of relevant Assembly resolutions and with the Staff Regulations.

20. The provisional Staff Rules were prepared using the existing 100 series of the Staff Rules as a baseline and ensuring that the operational requirements of the 200 and 300 series of the Staff Rules were incorporated. Amendments to the 100, 200 and 300 series of the Staff Rules, which had been previously submitted to the General Assembly for consideration during the main part of its sixty-second session, were also taken into account (A/62/185).

21. The provisional Staff Rules consist of 13 chapters, which follow the same order and structure of the previous 100 series of the Staff Rules from chapter I to XII.

22. Chapter I on duties, obligations and privileges has been reorganized for clarity, i.e., some rules were moved to other chapters and rules from other chapters were moved to chapter I in order to ensure that all rules related to duties, obligations and privileges were included in that chapter.

23. Chapter II on classification of posts and staff has been introduced, as there was no chapter in the former Staff Rules that corresponded to article II of the Staff Regulations.

24. Chapter III on salaries and related allowances reflects the harmonization of conditions of service resulting from the contract reform, and in particular the new compensation package for staff on temporary appointments, who will receive reduced benefits and entitlements in comparison with staff on fixed-term and continuing appointments, as approved by the General Assembly under paragraph 8

of section II of General Assembly resolution 63/250. In particular, staff on temporary appointment will not receive annual within-grade increments, language allowance, education grant, mobility allowance, non-removal element of the mobility and hardship allowance, repatriation grant or special post allowance.

25. Chapter IV on appointment and promotion reflects the implementation of the new contractual framework. However, pursuant to paragraph 3 of section II of resolution 63/250, which requested the Secretary-General not to grant any staff a continuing appointment before 1 January 2010 pending further consideration by the General Assembly of the issue of the implementation of continuing appointments at its sixty-fourth session, the language of provisional staff rule 4.14 on continuing appointments and provisional staff rule 4.15 (j) on the role of the central review bodies in the conversion or granting of continuing appointments indicate that the granting of continuing appointments is subject to the Assembly's further consideration of this issue at its sixty-fourth session.

26. In section II, paragraph 9, of its resolution 63/250, the General Assembly requested the Secretary-General to provide information on the circumstances in which the renewal of a temporary appointment for up to one additional year could be granted. Pursuant to provisional staff rule 4.12 (b), a temporary appointment may be extended for up to one year only when warranted by surge requirements and operational needs related to field operations and special projects with finite mandates under circumstances and conditions established by the Secretary-General. Operational needs related to field operations would encompass service in the field and operational needs in headquarters duty stations that are truly field-related, such as those linked to emergency, post-conflict and humanitarian activities. Special projects with finite mandates would encompass activities at any duty station that, on the basis of past experience or current plans, are known to be unrelated to the regular and continuing mandates of the office concerned. The activity will clearly be one of limited duration due to a finite mandate, and may result from the temporary nature of the activity, such as in instances of limited funding commitment. It may result from the design and start-up of a new system for implementing a business procedure or the delivery of initial services in a new area of knowledge or procedures that would be taken over by continuing staff. The period of extension of an activity with a clearly finite mandate may involve, for instance, the completion of the start-up or design or of the special project.

27. The General Assembly will have before it a separate report by the Secretary-General on continuing appointments.

28. Chapters V and VI on annual and special leave and on social security respectively, reflect the reduced annual leave and sick leave entitlements for staff on temporary appointments and differentiates these entitlements from those of staff on fixed-term and continuing appointments in accordance with paragraph 8 of section II of General Assembly resolution 63/250.

29. Chapter VII on travel and removal expenses was reorganized to ensure a more logical and user-friendly structure. The travel terminology was harmonized throughout the chapter and the language used was simplified wherever possible for the purpose of clarity. This chapter also reflects the reduced entitlements and benefits for staff on temporary appointments compared with staff on fixed-term and continuing appointments in accordance with paragraph 8 of section II of General Assembly resolution 63/250. Notably, staff on temporary appointments will receive

only the daily subsistence allowance portion of the assignment grant and only for themselves. Family members of staff on temporary appointment will not be installed at the expense of the Organization, and temporary staff will receive only limited shipment upon assignment, transfer and separation.

30. Chapter VIII on staff relations was updated to make reference under staff rule 8.1 (b) to duty stations in general as opposed to specific duty stations, and to reflect protection from retaliation against a staff member exercising his or her functions under the chapter (rule 8.1 (e)).

31. Chapter IX on separation from service was reorganized in a more logical sequence and aligned to article IX of the amended Staff Regulations as approved by the General Assembly in its resolution 63/271. The new ground for termination "in the interest of the good administration of the Organization" for staff members holding continuing appointments, to apply also when the staff member is not in agreement, was reflected in accordance with paragraph 22 of section II of resolution 63/250 and consistent with the approved text of the amended Staff Regulations.

32. Chapters X and XI on disciplinary measures and appeals respectively, were prepared in accordance with the decisions of the General Assembly in its resolution 63/253 on the implementation of the new system of administration of justice in the United Nations.

33. Chapter XII on general provisions now contains former staff rule 100.1, which was previously in the introductory chapter of the 100 series of the Staff Rules, and is now covered under provisional staff rule 12.1.

34. Chapter XIII on transitional measures was introduced to include the transitional measures for staff members upon the implementation of the new contractual framework. These measures also reflect the protection of acquired rights for serving staff members under the former 100, 200 and 300 series of the Staff Rules, in particular for those staff holding probationary, permanent or indefinite appointments.

VI. Outstanding issue: permanent resident status

35. Pursuant to section III, paragraph 1, of resolution 60/238, the Secretary-General reported to the General Assembly at its sixty-first session on the practice of United Nations staff members having to renounce permanent resident status in a country outside the country of their nationality (see A/61/228 and Corr.1). In that report, taking into account issues such as geographical representation and financial impact, the Secretary-General invited the Assembly to reconsider the policy requiring staff members to renounce permanent resident status in a country other than the country of their nationality before recruitment, for the reasons explained in annex I to the report.

36. Provisional staff rule 1.5 (c) replicates staff rule 104.4 (c), which forms the basis for the current policy of requiring staff members to renounce permanent resident status in a country outside the country of their nationality. In the annex to his report contained in document A/61/228 and Corr.1, the Secretary-General noted that the background for the requirement to renounce permanent resident status stemmed from a long-standing policy articulated by the General Assembly in 1953, when the Fifth Committee, upon the recommendation of the Advisory Committee on Administrative and Budgetary Questions, noted that the "view was widely shared

that international officials should be true representatives of the culture and personality of the country of which they were nationals, and that those who elected to break their ties with that country could no longer claim to fulfil the conditions governing employment in the United Nations" (A/2615, paras. 69 and 70). The former Staff Rules were amended to reflect that policy.

37. Over the years, the requirement to renounce permanent resident status prior to recruitment for service on a 100-series appointment of more than one year has been consistently applied to all internationally recruited staff members irrespective of whether the permanent resident status to be renounced is in the country of the duty station or elsewhere.

38. However, much has changed since 1953. Even though the home country of staff members is still an important factor, family situations have increasingly shifted from a national family setting to a multicultural international setting. The change in the family pattern has a significant bearing on the place of a staff member's residence. This is particularly true today, where an increasing number of staff serve in non-family duty stations while their families reside in the country of the spouse and not in the country of the staff member. The right to permanent residence status is an important factor with respect to establishing and maintaining family ties and the requirement to give up permanent residency therefore has a severe impact on individual staff members serving in one mobile international workforce.

39. As indicated above, mobility across duty stations has become an essential part of the conditions of employment in the United Nations and the requirement to renounce permanent resident status creates major obstacles for mobility. Under the former Staff Rules, staff members serving outside the United States who were holding 200 and 300 series of appointments were not required to give up their permanent residency. However, if they were reappointed to the 100 series of the Staff Rules they would lose the benefit of that exemption, which hampers mobility. This is even more pertinent today, when the 200 and 300 series of Staff Rules no longer exist and many of these staff members will transition to fixed-term appointments and will, as a result, be required to give up their permanent residency as a prerequisite for continued employment with the United Nations.

40. The Secretary-General also noted in annex I to his report contained in A/61/228 and Corr.1 that, since staff members holding permanent resident status are listed by the United Nations under the country of their recognized nationality, the acquisition or retention of permanent resident status would not affect the current method for determining geographical distribution.

41. The Secretary-General reiterates that a review of the policy would be appropriate since the increasing use of fixed-term appointments by the Organization calls into question the fairness of requiring a candidate to give up permanent residence status, which has significant long-term consequences, as a prerequisite for accepting a fixed-term appointment.

42. The General Assembly may wish to reconsider the requirement to renounce permanent resident status as it applies to all internationally recruited staff members. The current practice of allowing locally recruited staff members to maintain permanent resident status would remain unchanged.

43. Should the General Assembly decide that internationally recruited staff members should no longer be required to renounce permanent resident status prior

to recruitment, the Secretary-General would abolish provisional staff rule 1.5 (c), while ensuring that staff rule 4.5 (d), which provides the basis to discontinue international benefits for staff members who become permanent residents in the country of their duty stations, would continue to be strictly enforced.

VII. Actions to be taken by the General Assembly

44. The General Assembly may wish to:

(a) To take note of the new Staff Rules set out in document ST/SGB/2009/7;

(b) Request the Secretary-General to amend staff rules 4.14 and 4.15 (j) on the basis of its consideration of the report of the Secretary-General on continuing appointments at its sixty-fourth session, and to report on the new Staff Rules in accordance with staff regulation 12.3 at its sixty-fifth session;

(c) To reconsider the issue of the requirement to renounce permanent resident status as it applies to all internationally recruited staff members and, if it agrees to remove this requirement, to decide to delete staff rule 1.5 (c).